

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT INNIS	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 07-1343
	)	
HARRY WILSON, <u>et al.</u> ,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM and ORDER

Gary L. Lancaster,  
District Judge.

April 23, 2008

This is a civil rights case brought by a pro se prisoner. Plaintiff Robert Innis, who is currently incarcerated in the State Correctional Institution at Fayette, alleges that he was denied medical treatment in violation of the Eight Amendment to the United States Constitution. This case was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings.

The defendants filed motions to dismiss [Doc. Nos. 29, 34] contending that the allegations in the complaint did not support a claim that defendants were deliberately indifferent to a serious medical need. Magistrate Judge Caiazza prepared a report and recommendation ("R & R"), filed on March 7, 2008, and recommended that the motions to dismiss be granted. [Doc. No. 46]. Magistrate Judge Caiazza held that plaintiff's complaint merely alleged that his medical care was inadequate, not that he was denied all treatment. The parties were allowed ten days from the

date of service of the R & R to file objections.

On April 14, 2008, plaintiff filed objections [Doc. 48], as well as a motion for leave to file an amended complaint [Doc. No. 49]. In his objections, plaintiff asserts new facts concerning a January 18, 2008 incident in which defendant Myers allegedly denied plaintiff medical treatment.

The Court of Appeals for the Third Circuit has directed that the district courts must grant pro se litigants leave to file an amended complaint unless such amendment would be futile. Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). As such, while the court agrees with the analysis set forth in the R & R, that plaintiff's complaint failed to state a claim, this court must afford plaintiff an opportunity to amend his complaint, unless an amendment would be futile. The court sees nothing in the record to indicate that, as a matter of law, any amendment would be futile.

The court, therefore, declines to adopt the R & R. Magistrate Judge Caiazza is directed to enter an Order granting plaintiff's motion for leave to amend complaint as to all defendants [Doc. No. 49] and instructing plaintiff to file his amended complaint on a date set by the Magistrate Judge. This case is remanded to Magistrate Judge Caiazza for further proceedings.

BY THE COURT:

 J.